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ARTICLES

MONTANA'S JUDICIAL SYSTEM — A BLUEPRINT FOR MODERNIZATION

David R. Mason* and William F. Crowley**

HISTORY AND NATURE OF THE SYSTEM

Introduction

Montana's judicial system is as old as the state itself. It was designed for a horse and buggy society, where transportation was difficult and slow and in which controversies were simple. But in our more complex present day society, with modern highways and automobiles, and with more complex problems for adjudication, it is inadequate. It is cumbersome, inefficient and expensive.

A brief survey of the system, without attempting a complete examination of the jurisdictions of the several courts, will suffice for an understanding of its nature and indicate its weaknesses.

The Supreme Court¹

The Montana Constitution prescribes a three-tier hierarchy of courts. At the top is the supreme court, having appellate jurisdiction of cases decided in the district courts and also having limited original jurisdiction consisting of power to issue certain extraordinary writs and to exercise general supervisory power over our inferior courts.

The supervisory power of the court, however, operates principally to keep inferior courts within their respective jurisdictions and prevent abuses of such jurisdictions in specific cases, although the supreme court may make an order apportioning business among district judges of a multiple judge district if they fail to make their own apportionment² and may mandamus a judge in a single district to perform his duties.³ But neither the constitution nor statutes of the state contemplate integral, continuous administrative control or supervision by the supreme court of lower state courts.

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¹For the jurisdiction of the supreme court, see MONT. CONST. art. VIII, §§ 2, 3; REVISED CODES OF MONTANA, 1947, §§ 93-213 to 93-218. Hereinafter, REVISED CODES OF MONTANA are cited as R.C.M.

²R.C.M. 1947, § 93-321; State *ex rel.* Magnuson v. District Court, 125 Mont. 79, 231 P.2d 941 (1951).

³State *ex rel.* Bennett v. Bonner, 123 Mont. 414, 214 P.2d 747 (1950). It seems that the supreme court may also order a non-resident judge to perform the duties when a district judge fails to perform them.

District Courts

The second tier of the judicial hierarchy consists of district courts. At present the state is divided into 18 judicial districts, each district having from 1 to 3 judges and there being 28 district judges in all.⁴ These are the courts of general trial jurisdiction.⁵ Their original civil jurisdiction extends to all cases in law and equity in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and all cases whatsoever involving the right to possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine; actions of forcible entry and unlawful detainer; proceedings in insolvency; actions for divorce and for the annulment of marriage; and special actions and proceedings for writs of mandamus, quo warranto, certiorari, prohibition, injunction and habeas corpus. Their criminal jurisdiction includes all cases amounting to felony, and all cases of misdemeanor not otherwise provided for. In addition, district courts have appellate jurisdiction in cases arising in justice of the peace courts and police courts. But this appellate jurisdiction is not confined to a review of the records of the cases in these inferior courts. Rather on such appeals the cases are tried anew.⁶ Thus in the petty type of case within the jurisdiction of the inferior courts, the proceeding may become only a practice trial preceding trial in the district court.

Inferior Courts

At the bottom of the hierarchy are justice of the peace courts and police courts. Justice courts have concurrent jurisdiction with district courts in cases of forcible entry and unlawful detainer. But in other civil cases they only have jurisdiction where the claim or value of the property involved does not exceed the sum of three hundred dollars. They have no jurisdiction of any case involving the title or right to possession of real property (other than the forcible entry and unlawful detainer cases), nor in cases of divorce, nor annulment of marriage, nor in cases of equity, and they have no power to issue enumerated extraordinary writs.⁷ Their criminal jurisdiction is limited to such offenses not of the grade of felony as may be provided by law.

The Montana Constitution provides that the legislative assembly may provide for the creation of police and municipal courts for cities and towns,⁸ and the legislature has enacted legislation pursuant to which police courts have been established.⁹ The exclusive civil jurisdiction of

⁴R.C.M., 1947, §§ 93-301, 93-301.1, 93-301.2, 93-302.

⁵For the jurisdiction of the district courts, see MONT. CONST. art. VIII, § 11; R.C.M., 1947, §§ 93-318, 319.

⁶R.C.M., 1947, 93-7902.

⁷For the jurisdiction of justices' courts, see MONT. CONST., art VIII, §§ 20, 21; R.C.M., 1947, 93-404, 408 to 410.

⁸Article VIII, § 24.

⁹R.C.M., 1947, § 11-1601. Section 11-1701 authorizes the establishment of municipal courts, but none have been created.

police courts is prescribed by statute¹⁰ and, includes actions for the collection of taxes and assessments, for money due to or from the city or town, for the recovery of personal property belonging to the city or town, and for the collection of any license required by ordinance of the city or town, when the amount or value of the property does not exceed three hundred dollars. Also, they have exclusive jurisdiction of the violation of any ordinance of the city or town, and concurrent jurisdiction with justice courts of specified offenses not of the grade of felony committed within the county wherein the police court is situated.¹¹

The System in Operation

Consideration of this system in operation leads to the conclusion that there is need for material alteration of it and for the establishment of a two-level court system with built in administrative features for efficient and even administration of justice.

Let us look first to the district courts. Legislative districting of the state has not established a well balanced judiciary. Population in the 18 judicial districts ranges from over 104,000 in the 13th district to 11,733 in the 14th district. The area within the districts ranges from 23,350 square miles in the 16th district to 716 square miles in the 2nd judicial district. And perhaps more important, the case load judge varied in 1966 from 1,427 in the 8th judicial district to 317 in the 14th judicial district. Recognizing that a case load does not necessarily accurately reflect the work load, particularly because the area of some districts is such as to involve much more travel than is necessary in other districts, nevertheless this represents a considerable variation. The caseload chart on page 4 shows the present judicial districts with the 1966 case loads.

There is no authority to change judicial districts or the number of judges therein except by means of legislation. Since ordinarily the legislature meets only once every two years, and since there is nobody continuously studying work loads or judicial needs, such a system is inefficient. This is demonstrated by the caseload chart. Further, it may lead to a failure of justice. A case recently was dismissed for failure to prosecute within the six months provided by law,¹² which failure was the result of the fact that each of the two judges in the district holds only one criminal calendar each year.¹³

When one comes to consider the operation of the inferior courts, the reason for their establishment should be borne in mind. A New York court once described the office of the justice of the peace as follows:

¹⁰R.C.M., 1947, § 11-1603.

¹¹R.C.M., 1947, § 11-1602.

¹²R.C.M., 1957, § 94-9501(2).

¹³State *ex rel.* Sullivan v. District Court, 433 P.2d 146 (Mont. 1967).

PRESENT JUDICIAL DISTRICTS WITH 1966 CASE LOADS

No. District Judges		Counties	Population	Area ¹⁴ Sq. Miles	County ¹⁵ Case Load	District Case Load	Judge Case Load
1	2	Lewis and Clark	28,006	3,466	953		
		Broadwater	2,804	1,198	117	1,070	535
2	2	Silver Bow	46,454	716	1,445	1,445	722
3	1	Powell	7,002	2,337	206		
		Granite	3,014	1,733	85	679	679
		Deer Lodge	18,640	738	388		
4	3	Missoula	44,663	2,613	1,650		
		Mineral	3,037	1,223	104	2,704	901
		Lake	13,104	1,500	429		
		Ravalli	12,341	2,384	359		
		Sanders	6,880	2,799	162		
5	1	Beaverhead	7,194	5,556	186		
		Jefferson	4,297	1,651	59	409	409
		Madison	5,211	3,530	164		
6	1	Park	13,168	2,627	360		
		Sweet Grass	3,290	1,846	99	459	459
7	1	Dawson	12,314	2,358	294		
		McCone	3,321	2,594	103		
		Richland	10,504	2,065	481	933	933
		Wibaux	1,698	889	55		
8	3	Cascade	73,418	2,659	4,110		
		Chouteau	7,348	3,920	164	4,274	1,427
9	1	Teton	7,295	2,294	128		
		Pondera	7,653	1,643	120	893	893
		Toole	7,904	1,950	305		
		Glacier	11,565	2,974	340		
10	1	Fergus	14,018	4,244	390		
		Judith Basin	3,085	1,880	62	470	470
		Petroleum	894	1,650	18		
11	2	Flathead	32,965	5,140	892		
		Lincoln	12,537	3,715	342	1,234	617
12	1	Liberty	2,624	1,439	45		
		Hill	18,653	2,926	376	554	554
		Blaine	8,091	4,267	133		
13	3	Yellowstone	79,016	2,635	3,505		
		Big Horn	10,007	5,033	286	4,184	1,395
		Carbon	8,317	2,070	210		
		Stillwater	5,526	1,797	148		
		Treasure	1,345	984	35		
14	1	Meagher	2,616	2,354	95		
		Wheatland	3,026	1,422	69	317	317
		Golden Valley	1,203	1,178	22		
		Musselshell	4,888	1,886	131		
15	1	Roosevelt	11,731	2,385	329		
		Daniels	3,755	1,443	77	534	534
		Sheridan	6,458	1,700	128		
16	2	Custer	13,227	3,765	357		
		Carter	2,493	3,313	51	799	399
		Fallon	3,997	1,633	94		
		Prairie	2,318	1,727	46		
		Powder River	2,485	3,285	44		
		Garfield	1,981	4,595	30		
		Rosebud	6,187	5,032	177		
17	1	Phillips	6,027	5,228	130		
		Valley	17,080	4,961	368	498	498
18	1	Gallatin	26,045	2,517	724	724	724

¹⁴Figures are from the WORLD ALMANAC AND BOOK OF FACTS 1967, and the population is that of 1960.

¹⁵Figures are for the calendar year 1966, and are those submitted by county attorneys in response to questionnaires of the Montana Supreme Court.

The office of justice of the peace came down to us from remote times. It existed in England before the discovery of America, and it has existed here practically during our entire history, both colonial and state, at first with criminal jurisdiction only, but for more than two centuries past with civil jurisdiction . . . It exists in every state of the Union, and is regarded as of great importance to the people at large, as it opens doors of justice near their own homes, and not only affords a cheap and speedy remedy for minor grievances as to the rights of property, but also renders substantial aid in the prevention and punishment of crime.¹⁶

Our own supreme court more than half a century ago spoke of the design "to make the justice of the peace court a forum serviceable to the people, where litigation may proceed without the aid of attorneys . . ."¹⁷

But society is much more complex and the business of the courts is much more involved and technical than it was even half a century ago, and this is reflected by the fact that many states today are overhauling their judicial systems.¹⁸ Today it is clear that if justice is to be dispensed expeditiously without the aid of attorneys, it must be by capable judges who are well trained in our system of jurisprudence. Yet such is not the case. No educational or professional qualification is required for justices of the peace.¹⁹ And since a justice may serve concurrently as a police judge,²⁰ the qualifications of a police judge are as minimal as those of a justice.

Furthermore, the conditions under which most justices of the peace function are hardly conducive to a judicious proceeding. One incident has been reported of a justice, whose full time job was that of an automobile mechanic, who held court without ever emerging from beneath the automobile he was repairing.²¹ Reports of justices of the peace for the calendar year 1966 indicate that a court room is furnished to less than 30% of the justices. Others hold court in a variety of places, including a newspaper office, elevator office, store, railroad depot, sheriff's office, police station, pool hall, highway patrol office, city hall, county jail, city council chambers, and home of the justice. About 30% of those reporting stated that they held court in their homes. One justice commented: "At times, this home deal get [sic] real complicated." Another said: "My only objection . . . is that at times the defendants in actions, particularly

¹⁶People *ex rel.* Bunby v. Howland, 155 N.Y. 270, 49 N.E. 775, 776, 41 L.R.A. 838 (1898).

¹⁷Reynolds v. Smith, 48 Mont. 149, 135 P. 1190 (1913).

¹⁸*Infra*, p. 38.

¹⁹R.C.M., 1947, § 93-704, merely provides: "Every justice of the peace must reside in the township in which his court is held, and no person is eligible to the office of justice of the peace unless he shall have been a citizen of the United States and a resident of the county, in which he is to serve, for one year next preceding his election or appointment."

²⁰R.C.M., 1947, § 11-1604.

²¹Justice of the Peace Subcommittee of the Montana Legislative Council, *Justice of the Peace Courts*, being a study prepared pursuant to House Res. No. 1 of Jan. 15, 1959. *House Journal* 49 (1959).

traffic cases, seem to think that they are privileged to invade the privacy of my home."²²

The fee basis for compensation of justices of the peace is a further obstacle to impartial justice. Justices in townships having a population of less than 10,000 people are allowed to retain fees as their compensation. Apparently this includes about 85% of the justices of the peace in Montana.²³

Further, the amount which can be earned is limited,²⁴ and the consequence is that justices are judges only part time. And the situation is aggravated by the constitutional requirement that there be two justices in each organized township,²⁵ and the arresting or prosecuting officer can select the judge before whom he will take a case, thus controlling the earnings of the justice. One justice reported he had no cases whatever in the calendar year 1966, apparently because Highway Patrol officers took violators out of his township. Another justice wrote: "[T]he influence exerted over these Courts by the Montana Highway Patrol is not in the best interest of justice and should be stopped." Yet another opined that justices of the peace should be on a salary, and wrote: "It would make it more equal where two justices are elected in one township and stop these County Attorneys and Highway Patrolmen from filing all cases in one Court, which you will note by the newspaper clipping enclosed of the State auditing report of 1967, that the total monies collected in the [other] . . . Court, who is also the court house janitor, far exceed that collected in my Court, which I consider very unfair." Another justice wrote: "[L]aw enforcement at the lower levels has degenerated to a point where it is a pitfall."²⁶

When it comes to an examination of the actual functioning of these courts, one finds that they are mainly traffic courts. Justices of the peace courts are used when the traffic offense is committed outside the limits of cities and towns. The few civil actions which are brought in these courts appear to be actions of debt, generally through garnishment or attachment, and the function of the justices appears to be merely administrative. Police courts function principally as tribunals to hear criminal actions involving violations of municipal ordinances, the greater proportion of their work involving violations of municipal traffic ordinances.²⁷

This system has been said to afford an inexpensive forum, but the facts hardly bear this out. There are 184 justices of the peace in Mon-

²²Responses to questionnaires by Supreme Court of Montana to justices of the peace, submitted in June, 1967.

²³*Supra*, note 22.

²⁴The statute limits compensation from fees in criminal cases to \$750.00 per year. R.C.M. 1947, § 25-303.

²⁵MONT. CONST. art. VIII, § 20.

²⁶*Supra*, note 22.

²⁷*Supra*, note 22.

tana,²⁸ and 104 police judges.²⁹ In case of sickness, absence, or inability of a police judge to act, a justice of the peace may be called in to act in his stead;³⁰ and one may simultaneously hold the position of police judge and justice of the peace.³¹ There appear to be 56 judges acting in this dual capacity³² and, consequently, there are 232 persons appointed or elected to administer justice on this lower level in Montana. And justices of the peace are not distributed on any rational basis, either of population or area. The two most populous counties, Yellowstone and Cascade, have only 3 justices each. One of the largest counties in area, Garfield, has only one justice. But Madison County which has neither large population nor area is served by 9 justices. As one justice of the peace said: "5 J. P. in . . . County, is like five horses on a buggy."³³

The expense in compensation to the judges alone is considerable. In 1966, justices who were on a fixed salary earned \$94,000.00³⁴ and those on fees earned at least \$68,795.60.³⁵ Police judges are all salaried.³⁶ In 1966, they were paid \$76,879.12.³⁷ Consequently, in 1966 the total compensation to justices of the peace and police judges was \$239,674.72. For this amount of money, 15 district court judges could be employed at the present statutory salary of \$15,000.00 with a surplus.

PROPOSALS FOR MODERNIZATION

In General

The mere description of the present court system in Montana is sufficient to establish the need for change. For many years the need for a change in the justice of the peace and police court system has been recognized, and a conference of 100 Montana citizens, which met in Great Falls in 1966, adopted a consensus statement which said, "the type and quality of justice presently being provided in these courts could be materially improved by adoption of a uniform court system which would provide a district court level of judicial quality for all legal proceedings."³⁸

²⁸Mont. Highway Patrol's list of justices of the peace.

²⁹Municipal League of Montana, list of police judges and addresses.

³⁰R.C.M., 1947, § 11-1604.

³¹7 OP. ATT'Y GEN. MONT. 256 (1918).

³²Comparison of Highway Patrol's list of justices, *supra*, note 28, and Municipal League's list of police judges, *supra*, note 29.

³³Response to questionnaire by Supreme Court of Montana to justices of the peace, submitted in June, 1967, *supra* note 22.

³⁴There are constables and other employees whose compensation is not included in this figure.

³⁵Official reports of justices to Highway Patrol Department. These include only earnings from Highway Patrol cases, and do not include fees from other misdemeanor cases or civil cases.

³⁶R.C.M. 1947, § 11-726.

³⁷1966 Municipal Salary Survey, compiled by the Montana Municipal League.

³⁸The Consensus of the Citizens' Conference on the Montana Judicial System, Great Falls, Montana, September 29-30, October 1, 1966.

But at the district court level, reforms are also indicated. A system is needed for effecting a better balance in judicial districts and flexibility to adjust to divisions or kinds of judicial business and changing case loads. A well run judiciary requires adequate administration, just as does a well run business.

The need is recognized. Concrete plans to fulfill the need are what is required. For this purpose, there must be a complete revision of the judicial article of the Montana Constitution, a definite plan for districting and redistricting to meet changing conditions and work loads, special rules to simplify procedures in the handling of small claims, and built-in devices for efficient administration of our judicial system. The proposals which follow are designed to afford a pattern for this much needed modernization.

Proposed Constitutional Amendment

The following draft of a proposed revision of the judicial article and certain other sections of the constitution is designed to bring about the needed modernization. This draft includes comments to each proposed section identifying the changes made and their purposes. The proposed revision would:

- 1) Clearly delineate the supervisory powers of the supreme court over the district courts;
- 2) Clarify the administrative structure of the district courts;
- 3) Abolish the justice of the peace, police and municipal courts and place their present jurisdiction in the district courts;
- 4) Create the office of commissioner to permit the exercise of district court functions in certain criminal matters by a specially appointed member of the bar where a district judge cannot reasonably be made available;
- 5) Permit the institution of a small claims division of the district court to provide expeditious handling of the smaller civil matters which are now largely ignored;
- 6) Permit the legislature to provide methods of selection other than election for members of the judiciary;
- 7) Place in the supreme court primary authority to form and change judicial districts and determine the number of judges per district.

It is the opinion of the authors that all these purposes can be accomplished in a single constitutional amendment, although they involve all 37 sections of Article VIII as well as three sections of two other articles. This is because the only limitation on the scope of an amendment is in the constitutional provision that “. . . not more than three amendments

to this constitution shall be submitted at the same election."³⁹ This has been interpreted by the supreme court to mean that each amendment may include all parts or aspects of a single plan.⁴⁰ This proposed amendment, of course, provides only for a single plan—a modern judicial system for Montana.

The suggested revisions and comments follow:

ARTICLE VIII⁴¹

JUDICIAL DEPARTMENTS

Section 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court and district courts.

Comment: This section is the same as the present section 1 of article VIII, except that all reference to justices of the peace and other inferior courts has been eliminated, in line with one of the purposes of the entire amendment, which is to abolish all interior courts and absorb their functions into the district courts.

SUPREME COURT

Section 2. The Supreme Court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory and administrative control over all inferior courts, under such regulations and limitations as may be prescribed by law.

Comment: This is identical to the present section 2 except that a provision for "administrative control" has been added to facilitate another of the general purposes of this amendment; namely, to provide for a system of administration within the court system, with well defined lines of administrative control running from each branch or division of each court through a central administrative authority, culminating finally in the supreme court. This provision does not expand the present authority of the supreme court over the lower courts but will, in conjunction with other sections, establish a constitutional system of judicial administration.

³⁹Article XIX, § 9.

⁴⁰State *ex rel.* Hay v. Alderson, 49 Mont. 387, 142 P. 210 (1914); State *ex rel.* Corry v. Cooney, 70 Mont. 355, 225 P. 1007, 1011 (1924).

⁴¹This suggested revision omits the sections of the present article dealing with the terms of the supreme court (section 4) and the terms of the district courts (section 17), since times and places for holding court are matters of judicial administration for which the suggested substitution makes new provisions. It also omits the provisions dealing with justices of the peace, and police and municipal courts (§§ 20 to 24), since the jurisdictions of these courts is absorbed into the jurisdiction of the district courts.

Section 3. General administrative control over all courts in this state shall include the temporary assignment of any judge to a court other than that for which he was selected. The Supreme Court may appoint an administrative director and staff, who shall serve at its pleasure, to assist the chief justice in his administrative duties.

Comment: This section is new and has no counterpart in the present constitution. It, like section 2, is aimed at creating a clear line of administrative control and will work together with sections 2, 11, 12 and 13 to create an integrated system of administration. The second sentence is intended to eliminate any possible need for supplementary legislation if and when the supreme court finds that it needs some additional help to carry out its supervisory and administrative duties.

Section 4. The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the Supreme Court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the Supreme Court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the Supreme Court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

Comment: This is the present section 3 without change.

Section 5. The Supreme Court shall consist of five justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain, and the legislative assembly shall have power to increase the number of said justices to no more than seven. In case any justice of the Supreme Court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any

cause heard before the court as if regularly participated in by a justice of the Supreme Court.

Comment: This is the present section 5 with no change except that the number of justices is set at 5 with possible future expansion to 7, in contrast to the present section 5 which originally set the number of justices at 3 but permitted expansion to the present number of 5.

Section 6. The justices of the Supreme Court shall be elected by the electors of the state at large, as hereafter provided, unless the legislative assembly shall provide by law another method of selection.

Comment: This is substantially the same as the present section 6 but provides that the legislature may by law change the method of judicial selection. This will make possible, but not require, some method of selection other than the present mandatory method of popular election. If the legislature should see fit at some time in the future to adopt the Missouri Plan or some variant thereof, this change will remove any constitutional roadblock.

Section 7. The term of office of the justices of the Supreme Court, except as in this constitution otherwise provided, shall be six years.

Comment: This is the present section 7, unchanged.

Section 8. At least one of the justices shall be elected or selected as provided by law every two years. The chief justice shall preside at all sessions of the Supreme Court. In case of his absence, he shall appoint an associate justice to preside in his stead.

Comment: This is a substitute for the present section 8, which is encumbered with language pertaining to the original selections under the original constitution which has no pertinence now. The same method of staggering the terms is preserved, as well as the requirement that the chief justice preside. The provision for the appointment of the acting chief justice is a change from the present system which requires that the justice with the shortest time left in his term of office be acting justice. This change would seem to be a slight improvement from an administrative standpoint.

Section 9. There shall be a clerk of the Supreme Court, who shall hold his office for the term of six years. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law and by the rules of the Supreme Court.

Comment: Substantially the same as the present section 9.

DISTRICT COURTS

Section 10. The district courts shall have original jurisdiction of all justiciable matters, both civil and criminal, including jurisdictions to

issue original and remedial writs. Their process shall extend to all parts of the state, and injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and nonjudicial days. Jurisdiction to review administrative action shall be as provided by law. They shall have power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States.

Comment: This is a substitute for the present section 11 and has been completely rewritten to carry out the intention of this proposal to place all trial jurisdiction in the hands of the district courts and abolish inferior courts and their jurisdiction. The enumeration of many specific matters has been compressed into the grant of jurisdiction over all justiciable matters, both civil and criminal. The enumeration of specific writs these courts are empowered to issue has again been brought together in the general power "to issue original and remedial writs." It is the intention of these provisions to place complete and plenary power in the district courts over all matters with which district courts deal now or may deal in the future. While no specific broadening of jurisdiction, beyond the assumption of that of the inferior courts, is contemplated, it is hoped that this provision is sufficiently complete to leave no gaps in the jurisdiction of these courts. The reference to naturalization has been carried forward from present section 11 because such specific reference appears necessary to exercise this essentially federal power.

Section 11. The district judges in each district shall select one of the district judges to serve at their pleasure as chief judge of such district. If no such selection is made, the chief justice of the Supreme Court shall make the selection. Under the supervision and control of the Supreme Court, the chief judge shall have general administrative authority to provide for divisions and assign judges to particular types of cases, and designate times and places of holding court.

Comment: This is basically a new section and is a key change in setting up the complete system of court administration, by making one judge of each district primarily responsible for the administration of all the matters in all the courts and divisions of courts in his district and by providing direct continuity between these courts and the supervisory arm of the supreme court.

Section 12. The chief judge of each district may, with the approval of the chief justice of the Supreme Court, appoint a commissioner or commissioners, to serve at the pleasure of the chief judge of the district. A commissioner so appointed shall exercise the district courts' jurisdiction of criminal cases not amounting to felony and may act as a committing and examining court in felony cases. The territory and type of case assigned to a commissioner shall be prescribed by the chief judge.

Comment: This section is entirely new and is intended to provide flexibility in those situations where difficulties will be created by the

absorption of lower court jurisdiction into the district court. It is intended to permit the appointment of an officer who will exercise a limited portion of the district court's jurisdiction as an integral part of the district court, in a position somewhat similar to a master or referee under our present civil rules. It sets up a system by which part-time or full-time judicial officers may be provided to handle part of the criminal case load in the courts. Commissioners may be appointed under this section to exercise jurisdiction in individual cases, in particular types and classes of cases, or to have complete jurisdiction over all the types of cases permitted by this section in a particular territory. The section contemplates that the permission of the chief justice of the supreme court would be necessary for the original creation of the position of commissioner, with a careful delineation of the class of cases and the territorial bounds within which he shall act. It may be that some of these appointments may be of a permanent nature and substantially conform to the duties now exercised in particular places by justices of the peace or police judges. Commissioners will, however, be members of the bar exercising district court judicial functions and will be responsible to the chief judge of the district and the chief justice of the supreme court and be an integral part of the judicial system.

Section 13. The state shall be divided into judicial districts as provided by law, in each of which there shall be elected, or selected as provided by law, at least two judges whose terms shall be four years. Any judge of a district court may hold court for any other district court, and shall do so when required by order of the Supreme Court.

Comment: This section is new and is a substitute for the present section 12. It provides a new minimum number of judges per district (2) and implements the provision of section 3 which permits assignment of judges to duties in districts other than their own. It does not require election by the electors at large within an entire district, and, consequently, would permit election of a judge by the electors within a limited area of a district. Thus, the present judicial districts could constitute electoral subdivisions within the enlarged districts suggested *infra*, p. 20. This section also is formulated to permit future changes in the selection process.

Section 14. The Supreme Court may increase or decrease the number of judges in any judicial district, provided that there shall be at least two judges in each district; and may divide the state, or any part thereof, into new districts, provided that each be formed of compact territory and be bounded by county lines. No change in the number or boundaries of districts, or diminution of the number of judges, shall have the effect of removing a judge from office. Such change in districts or the number of judges therein shall not take place more frequently than every four years.

Comment: This section is new and is a substitute for present sections

13 and 14. It continues the present standards for the creation of judicial districts and guards against the elimination of any judicial positions through a change in district boundaries. The principal change is in the provision that the Supreme Court, rather than the legislature, shall have the power to change district boundaries and increase or decrease the number of judges per district.

Section 15. Appeals shall be allowed from decisions of district courts and commissioners to the Supreme Court, under such regulations as may be prescribed by law.

Comment: This section is new and is a substitute for the present section 15. Reference to appeals to district courts from inferior courts is, of course, eliminated and the decisions of commissioners are made directly appealable to the Supreme Court. This is in conformity with the expressed purpose of section 12 to make the commissioner the full equivalent of a district judge while exercising that portion of the district court's power properly assigned to him.

Section 16. There shall be a clerk of the district court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as a district judge. The duties and compensation of said clerk shall be as provided by law.

Comment: This provision is the same as the present section 18.

COUNTY ATTORNEYS

Section 17. There shall be elected at the general election in each county of the state one county attorney whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Comment: This is an exact duplicate of the present section 19.

MISCELLANEOUS PROVISIONS

Section 18. The Supreme Court and district courts shall be courts of record.

Comment: This is the same as present section 25.

Section 19. No person shall be eligible to the office of justice of the Supreme Court, judge of a district court, or district court commissioner, unless he shall have been admitted to practice law in the Supreme Court

of Montana, and be a citizen of the United States. No person shall be eligible to the office of justice of the Supreme Court unless he shall be at least thirty years of age and shall have resided in the state at least two years next preceding his election or selection as provided by law. No person shall be eligible to the office of district judge or district court commissioner unless he shall be at least twenty-five years of age and have resided within the state at least one year next preceding his election, appointment, or selection as provided by law. District judges and commissioners need not be residents of the district for which they are chosen at the time of their election, appointment, or selection as provided by law, but after his election, appointment or selection as provided by law a district judge shall reside in the district for which he was chosen during this term of office.

Comment: This is a new section which will be substituted for the present sections 10, 16 and 33 which respectively provide qualifications and residence requirements for district court judges and supreme court justices. There is no good reason why these matters are separate in the present constitution and this is an attempt to achieve consolidation.

Section 20. All laws relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform.

Comment: This is the same as the present section 26.

Section 21. The style of all process shall be "The State of Montana," and all prosecutions shall be conducted in the name and by the authority of the same.

Comment: This is the same as the present section 27.

Section 22. There shall be but one form of civil action, and law and equity may be administered in the same action.

Comment: This is the same as the present section 28.

Section 23. The salaries of the justices of the Supreme Court and the judges of the district courts shall be paid by the state, and shall not be diminished during the terms for which they have been respectively elected, appointed or selected as provided by law. The salaries of the commissioners shall be paid by the county or counties for which they are appointed.

Comment: This is a new section which will be substituted for the present section 29 pertaining to judicial salaries. It does away with the quarterly payment of judicial salaries and provides for the necessary differentiation of the sources of salary between judges and commissioners.

Section 24. No justice of the Supreme Court nor judge or commissioner of the district court shall accept or receive any compensation, fee, allowance, perquisite or emolument for or on account of his office, in any form whatever, except mileage, per diem and salary provided by law.

Comment: This is the same as the present section 30 except that the prohibition upon the payment of mileage to judges has been eliminated and the payment of mileage and per diem has been expressly authorized. It was felt that this change would be desirable in view of the much more flexible methods of assigning judges, which could lead to financial hardship for a judge assigned to a position requiring considerable travel as contrasted with one whose assignment never required any travel.

Section 25. No justice or clerk of the supreme court, nor judge of or clerk of any district shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office.

Comment: This is identical to present section 31.

Section 26. The legislative assembly may provide for the publication of decisions and opinions of the Supreme Court.

Comment: This is identical to present section 32.

Section 27. Vacancies in the office of justice of the Supreme Court, or judge of the district court, or clerk of the Supreme Court, shall be filled by appointment by the governor of the state, and vacancies in the offices of county attorney and clerk of the district court shall be filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until his successor is elected or selected as otherwise provided by law and qualified. A person elected or selected to fill a vacancy shall hold office until the expiration of the term of the person he succeeds.

Comment: This is identical to present section 34.

Section 28. No justice of the Supreme Court or district judge shall hold any other public office while he is a justice or judge.

Comment: This is identical to present section 35.

Section 29. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

Comment: This is identical to present section 37. Present section 36 which provides for the trial of civil actions by judges pro tempore has been completely eliminated because it seemed more applicable to frontier conditions than those of the present day. Other provisions which facili-

tate the assignment of judges easily and quickly, such as section 3 and section 13, would seem to make provision for judges pro tempore unnecessary.

Section 30. Each district judge, judge of municipal court or police judge, and justice of the peace, in office on the effective date of this article shall continue to hold office and perform his present judicial functions until the expiration of his term.

Section 31. On the effective date of this article:

(1) Each court into which jurisdiction of other courts is transferred shall succeed to and assume jurisdiction of all causes, matters and proceedings then pending, with full power to carry into execution or otherwise give effect to all orders, judgments and decrees entered by the predecessor courts.

(2) The files, books, papers, records, documents, moneys, securities, and other property in the possession, custody or under the control of courts hereby abolished, or any officer thereof, are transferred to the district court; and thereafter all proceedings in all courts shall be matters of record.

Comment (for sections 30 and 31): These are new sections designed to achieve a smooth transition from the present constitution and the system functioning thereunder to the new system set up in this proposed article.

Article III must also be revised to carry out the purposes of the revision of Article VIII. The following is a proposed revision.

ARTICLE III

Section 8, Article III of the Constitution of the State of Montana is amended to read as follows:

Section 8. Criminal cases not amounting to felony shall be prosecuted by complaint. Felony cases shall be prosecuted by information, after examination and commitment as provided by law, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

Comment: Provision for prosecution by complaint is made applicable to criminal cases not amounting to felony, instead of of cases of which justice court and municipal and other courts inferior to the district court

have jurisdiction, since such inferior courts would be abolished under the suggested new Article VIII.

Section 23, Article III of the Constitution of the State of Montana is amended to read as follows:

Section 23. The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. In civil cases where the sum claimed or the value of that which is claimed by the plaintiff, not including interest and costs, does not exceed three hundred dollars, and in criminal cases not amounting to felony, a jury shall consist of not more than six persons. In all civil actions and in all criminal cases not amounting to felony, two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein.

Comment: The second sentence is changed to refer to types of cases now within the jurisdiction of justice courts, and the reference to justice courts is deleted, to conform to the provisions of suggested new Article VIII.

In addition, to avoid surplusage, Article V, section 26, containing prohibitions upon special legislation should be amended by deleting the clause referring to the jurisdiction and duties of justices of the peace, police magistrates and constables.

Redistricting and Absorption of Lower Court Case Loads

A. A Plan for Redistricting

As has been pointed out, the present 18 judicial districts do not appear to bear a sound relationship to population distribution, area, or case load per judge.⁴² Also, if the proposed plan for built-in administration, revolving around a chief judge in each district, is to be realized, there should be several judges in each district. Accordingly, it is tentatively proposed that the state be divided into 8 districts. The map on page 20 contains the proposal.

The plan would divide the case loads among the present 28 district judges so as to average 820 cases per judge per year and allow a maximum variance from 648 in district 7 to 1,027 in district 3. The present number of district judges (28) would be allocated among the 8 districts to give each district 3 judges and districts 1, 2, 3, and 6 a total of 4 each. This

⁴²*Supra* p. 4.

division would have the advantage of utilizing all of the present district judges in substantially their present areas of jurisdiction.

The district court case load was considered to be the dominant factor in any plan of redistricting, since this is the real and actual judicial work load in the state. With the merger of all the inferior courts into the district court system, the present justice courts and police courts would be absorbed into the district courts and the work load of these courts would become a part of the over-all district work load. This would necessitate the creation of additional judicial officers; primarily additional district judges but possibly some district court commissioners also.

As has been pointed out above, the money saved by the abolition of the justice and police courts would permit the creation of 15 new district judgeships.⁴³ Consequently, it appears that the change would entail little, if any, additional cost. Since the work load of the present inferior courts which must be absorbed into the district court system is not primarily a trial load, it appears that a careful allocation of new judicial personnel could absorb this load and render a district court level of justice in every civil and criminal action in the state of Montana.

No attempt has been made to allocate new judgeships among the districts since too many local factors such as distance, weather, accessibility by various modes of transportation and other things would have to be considered which are beyond the knowledge of the writers of this article. As few as three or as many as 44 justice courts would be absorbed in the judicial system of a district under this plan. From 1 to 14 police judge positions per district would also have to be incorporated. It is submitted that plans for assimilating the work of these courts could best be made on the local level under the supervision of the Supreme Court, and the allocation of new judicial members to various districts to accommodate the varying case loads could be done by the Supreme Court based upon studies of local conditions and recommendations by the present district court judges of the state. If deemed advisable, the proposed districts themselves could be changed.

The following study of the work loads of the inferior courts is indicative of the problems involved in the absorption of their work loads into the district courts.

B. The Work Load of the Justice Courts

The work load of the justice courts is not primarily a judicial work load. There is no existing repository of facts and statistics concerning the operations or work loads of justice courts, and, until recently, no comprehensive study had been made.

⁴³*Supra* p. 7.



In June, 1967, however, the Supreme Court directed questionnaires to the 184 justices in Montana, requesting certain information about the functioning of their courts during the calendar year of 1966. One hundred forty-one (141) justices replied. The number of replies represented 77% of the total number of courts. Replies were received from at least one justice of the peace in 54 of Montana's 56 counties and half or more of the justices of the peace answered in 53 of those counties.

Questions were asked concerning the work load of the courts in both the civil and criminal field. Since the replies received represent a large majority of the courts and appear to include practically all of those courts doing any substantial amount of business, and the courts reporting represent a substantial cross-section of the geography and population distribution of the state, it appears that certain generalizations about the volume and character of the work in these courts can properly be made.

1. Civil Work. The justice of the peace courts in Montana are relatively inactive in the civil field. The justice courts appear to function mainly, at present, as misdemeanor courts for traffic offenses committed outside the limits of cities and towns. The constitutional objective of having a "poor man's court" in which litigants in actions involving small sums could get efficient and substantial justice is not being effectuated.

Of the 141 justices of the peace reporting, 51 showed no civil cases filed in their courts during the calendar year of 1966. Eighty-nine justices (including all of the above mentioned 51) reported no trials of civil cases during that calendar year. It appears from these figures that over 1/3 of the justice courts handle no civil work at all and 2/3 of them have no trials in civil cases.

The judges reported a total of 4,797 civil case filings. They indicated that, of these, 263 were tried. The total number reported tried is only a little over 5% of the number filed; however, even this small figure does not give a true picture of the situation. Over 75% of all civil cases filed (3,665) were filed in just 11 of the 141 courts. Only 50 cases were tried in those courts for a trial ratio of only 1.5%. This might indicate a much higher ratio of trials in the other 130 courts but the reports leave substantial doubt of this; the actual number of trials may be much lower than the over-all total reported. A major portion of the total number of trials reported outside the 11 largest courts were filed by a few justices who showed that a trial was had in almost every case. Their reports indicate that many of the justices consider a "trial" to be any sort of proceeding beyond the filing of the original complaint, an appearance by the defendant, a contested motion, or anything other than a default judgment. There is every indication that the ratio of cases tried to cases filed is really lower than the statewide figures indicate.

One other significant factor emerged from a study of these reports.

The great volume of filings was concentrated in a few townships having

a large wage-earning labor force—principally in the mining, smelting and logging industries. Almost invariably one or more of the reporting courts in municipalities of this character showed an extraordinarily large number of civil cases filed with few or none ever tried.⁴⁴ In addition, some small communities with a predominantly laboring population showed a much higher rate of civil filings than that shown by nonindustrial communities of similar population.⁴⁵ Personal observation of the writers indicates that the great bulk of such civil actions are actions for recovery of debt, generally through the medium of garnishment or attachment, and the high incidence of filings in wage earning districts would seem to show a statewide pattern. Justice courts in the civil field (where they function at all) appear to be primarily administrative debt collection agencies where garnishment actions are pursued and ended by default judgment. Certainly the reports indicate that there is no great civil trial load in the justice courts of Montana at this time.

2. Criminal Work. The courts reporting showed a much larger volume of work in the criminal field but again indicated that the work load does not consist of trial work but rather of the administrative disposition of misdemeanor offenses of which the overwhelming majority are traffic offenses.

Forty-six of the courts reported that they had no criminal trial of any kind. Of the 138 courts which reported some trial work, 27 reported that they tried only traffic offenses. Only a little over half of the courts had both traffic and nontraffic trials in 1966. More than twice as many trials were reported on traffic offenses than on nontraffic offenses (2,790 traffic trials were reported against 1,299 nontraffic trials). Statewide, the justices reported that they tried less than 10% of the traffic cases filed in their courts. Even this figure is undoubtedly higher than the actual number tried due to the manner of reporting. Several judges noted that they included in the category of "cases tried" every case which was not a bond forfeiture—including pleas of guilty, actual trials, and payment of fines in person by the defendant. The figures submitted by a number of other judges who showed that trials were had in almost 100% of the cases indicate that these judges used the same standard to judge what was or was not a "trial." There is little doubt that the trial ratio in Montana justice courts in all criminal cases is considerably less than 15% of all cases filed.

There is some significant difference in the work loads of justices who have their offices at county seats and those who do not. Over half of the judges reporting who resided outside county seats had no trial at all during 1966 (37 of 72), but at least 73 of 84 justices at county seats re-

⁴⁴One justice of the peace in Anaconda reported 682 cases filed, 10 trials; two justices of the peace in Great Falls showed a total of 741 cases filed with 5 trials; two justices in Missoula showed 790 cases filed and 9 cases tried.

⁴⁵A justice court in Eureka showed 98 civil cases filed with no trials; a justice in Columbia Falls showed 52 cases filed and no trials; a justice in Troy showed 50 filings with no trials.

ported some trial work of one kind or another. The great bulk of reported trials in nontraffic cases was done in courts at county seats, 1,031 trials were held at county seats, and only 268 outside county seats.

These figures would seem to indicate further that the trials in all cases other than traffic offenses are centered in courts in the county seat where they can be handled by the county attorney as county prosecutor. Under the proposed two-level court system this natural centralization at county seats would permit district judges to handle the present justice court case loads without traveling into remote areas.

C. The Work of Police Judges

Police courts have minimal jurisdiction in civil actions.⁴⁶ Consequently, the Supreme Court questionnaire was directed to work in the criminal field. Sixty-four of 85 police judges reported and they represented a substantial cross-section of population distribution and the various geographical areas of the state.

As in the case of the justices of the peace the reports showed that the work of the police courts is not principally trial work and the manner of handling and disposing of cases is much the same.⁴⁷ The 64 judges who reported handled 46,026 traffic cases in 1966. 1,778 of these cases were tried—a trial rate of less than 4%. The police judges also reported 7,196 criminal prosecutions for offenses other than traffic violations. The reports show that 1,457 of these cases were tried—a trial ratio of a little over 20%. These figures appear, like the equivalent figures submitted by many justices of the peace, to be an overstatement because many of the judges reported as “trials” any proceeding beyond a mere bond default. Whether or not the entire discrepancy between the 4% trial rate on traffic offenses and the 20% reported rate on other offenses is due to this factor is impossible to state. However, most cities and towns have some procedure for disposition of routine traffic tickets without a personal appearance by the defendant. This is not generally true of the other kinds of misdemeanor violations handled by traffic courts, such as drunkenness and vagrancy where the accused is usually taken into custody and physically held for action by the police judge. Whatever the explanation, the combined trial rate for all offenses was only 6%. The work load of these courts, like that of the justice courts, is primarily administrative disposition of traffic offenses, with a somewhat higher load of nontraffic misdemeanors.

Procedures for Small Claims

As has been pointed out, small civil claims are largely ignored under our present system. This is not surprising in view of the fact that justices

⁴⁶See p. 3, *supra*.

⁴⁷Forty of the 64 police judges reporting were also justices of the peace.

are untrained and laymen are not capable of adequately presenting their own cases.

In general, lawyers cannot afford to handle these small claims, and the expense of litigating them according to the procedures applicable to such actions may be more than the amount of the claims. What is required, therefore, is a special procedure, simple, inexpensive, expeditious, and under the control of a competent judge. The following Rules are designed to accomplish these purposes, and are framed as additional Rules recommended to the Supreme Court of Montana, in a new division of the Montana Rules of Civil Procedure. They are limited to cases where the amount claimed does not exceed three hundred dollars, and in such cases process must be served within Montana. Principal features include:

(1) Simplified pleadings, an original notice on a form which is provided, and the elimination of motions and responsive pleadings raising the insufficiency of pleadings.

(2) No separate summons; and service by the clerk by restricted certified mail, with return receipt. If this inexpensive method of service cannot be obtained, service as in regular actions may be made.

(3) Appearance within 20 days at a specified day, and hearing at that time unless the court grants a continuance.

(4) Change of venue on request of the defendant on a form furnished by the clerk, to avoid undue burdens on a defendant residing at a place considerably distant from where the suit is commenced.

(5) Separation of counterclaims, cross claims and third party claims where they exceed the amount of small claims.

(6) Elimination of attachments and garnishments, which are subject to abuse in small claims actions.

(7) Elimination of pre-trial procedures, which may involve delay and considerable expense, unless ordered by the court on showing of good cause.

(8) Special provisions for a jury of 6, in the unusual case where a jury is demanded.

(9) An informal hearing at which the judge plays a leading role, and arrives at an expeditious adjudication under the substantive law without reference to technicalities. To promote such a hearing, it is to be without the presence of lawyers, unless the court orders otherwise on a showing that a party otherwise will be prejudiced in his presentation.

(10) Sittings of the court as provided by the chief judge at such times, as for instance in the evening, will allow litigants working for wages to use the court without unnecessary hardship.

(11) Power to enter judgments payable in installments.

(12) Elimination of trials *de novo* on appeal to an intermediate court.

(13) Direct appeal to the Supreme Court on a simplified record, but only from final judgments.

In addition to these Rules, legislation believed to involve matters other than procedure should be adopted.⁴⁸ Included would be legislation 1) providing that process in small claims actions not be served outside Montana;⁴⁹ 2) lowering fees and costs in small claims actions from those prescribed for regular actions⁵⁰ and 3) possibly excepting real property from the levy of executions to satisfy judgments in small claims actions, as is done by § 93-7402 of the Revised Codes of Montana, in the case of judgments of a justice court.

The recommended Rules are as follows:

XII SMALL CLAIMS

Rule 87. Definition, Limitation on Process, Procedure Governing

Civil actions in which the sum claimed or the value of that which is claimed by the plaintiff does not exceed three hundred dollars, exclusive of interest and costs, are known as small claims actions. Process in such actions shall not be served outside this state, and they are governed by the procedure prescribed in this division.

Comment: The limit on the amount claimed is more or less arbitrary (it could be \$500 or more), but it is a figure used in some other jurisdictions and is intended to exclude claims where the amount is sufficiently large to justify litigation by the procedure prescribed for regular actions.

In these small claims actions, so-called "long arm" statutes (Rule 4B(1), D, M.R.Civ.P.) may impose too great a burden on a defendant in relation to the amount in controversy, and, consequently, it is required that process be served within this state. This also makes possible the application of Rule 92, providing for change of venue to protect the impecunious defendant who lives at a distance from the place the suit is commenced. A possible alternative would be to require that the defendant be a resident of Montana, but this would present the difficult question of residence to the court for determination before it could proceed with a determination of the merits of the claim. If this is considered a matter of jurisdiction and not of procedure, and, therefore, not within the rule making power of the Court, supporting legislation should be enacted.

Rule 88. Commencement, Mesne Process, Docket

(a) Manner of commencement, Service. All small claims actions shall be commenced by the filing of an original notice with the clerk and by the mailing by the clerk of a copy of the same to each defendant at his last known address, as stated in the original notice, by restricted, certified

⁴⁸The legislature has merely delegated to the supreme court power to regulate "the pleading, practice, procedure, and the forms thereof in civil actions." R.C.M., 1947, § 93-2801.1.

⁴⁹See comments under Rule 87.

⁵⁰Report of the Iowa Legislative Court Study Commission (note 58 *infra*) provides that fees and costs shall be one-half of fees and costs in regular civil actions.

mail, return receipt requested. Instead of such mailing, the plaintiff may, after filing the original notice with the clerk, cause a copy to be served on all or some of the defendants in the manner provided by Rule 4D hereof. Service by mailing of notice as provided for in this Rule 88 shall not be effective unless a return receipt is obtained; but, if the return receipt is obtained, service shall be deemed complete upon the mailing of the notice.

(b) **Mesne process.** Attachments and garnishments shall not be used in small claims actions.

(c) **Docket.** The clerk shall maintain a book known as the small claims docket, which shall contain as to small claims the matters contained in the docket as to other civil actions.

Comment: The duty of mailing the original notice is placed upon the clerk because the plaintiff may be ignorant of legal rules and processes and be without aid of legal counsel. Service by restricted, certified mail gives sufficient notice, if actually received as evidenced by the written receipt. If no such receipt is obtained, the more elaborate processes for service under Rule 4D are available.

Attachments and garnishments are eliminated because they frequently are abused in suits upon small claims and because these Rules contemplate a speedy determination of the merits of the claim, after which execution may be levied to secure payment of the judgment.

The requirement of a separate docket will facilitate separation of these small claims actions from regular civil actions.

Rule 89. Original Notice

The original notice must be mailed or otherwise served not less than 10 days prior to the hearing date. The original notice and copies shall be signed by the plaintiff or by his attorney if the court so allows.

Comment: The relatively short period between service of the original notice and hearing contemplated by this Rule and Rule 90 is in accordance with the purpose to provide fast adjudication. Since the court has the power to grant continuances, as provided in Rule 95, there is no danger of inadequate time for preparation.

Rule 90. Function of the Clerk

The clerk shall furnish forms of original notice. At the time of filing any pleading, the clerk shall enter on it and copies to be served the file number and the time and place of appearance, which shall be a time when small claims are scheduled to be heard not less than 10 nor more than 20 days after the date on which the original notice was mailed or otherwise served. The clerk shall file original notices and pleadings and mail a copy of the original notice, and a copy of each pleading filed to

each party other than the party who has filed the same, except for parties whom the filing party wishes to serve under Rule 4D hereof.

Comment: This Rule and Rule 92 place duties on the clerk designed to aid parties who are without legal counsel and who frequently will be unable to handle technical matters themselves.

Rule 91. Pleadings, Service

(a) **Pleadings allowed.** All pleadings available in regular actions may be used, except that motions and responsive pleadings challenging the sufficiency of a pleading shall not be allowed.

(b) **Form of pleadings.** The original notice shall be substantially in the form provided by Form 24, Appendix of Forms, and all other pleadings shall be in similar form. Pleadings which are not in correct form under this Rule shall be ordered amended so as to be in correct form; but a pleading need not be amended if it is in the form of a regular pleading in an action other than a small claim.

(c) **Service.** All pleadings shall be mailed or otherwise served in the manner and within the time provided in Rules 88 and 89. Copies of papers other than pleadings filed by the parties shall be mailed or delivered by the clerk forthwith to the adverse party or parties.

Comment: The original notice and pleadings in similar form are more simple than those provided by these Rules for use in regular actions, but are, nevertheless, sufficient to apprise the defendant of the nature of the plaintiff's claim and afford a basis for a non-technical hearing on the merits of the claim according to the substantive law.

Rule 92. Change of Place of Trial

(a) **Grounds for change.** In addition to other grounds allowed by law, a change of place of trial may be granted by the court in its discretion upon application of a defendant because he is not a resident of the county in which the action has been filed. Such applications may be made by mail and must be made within seven days of receipt of the original notice. The court may decide such applications *ex parte* or upon such notice and hearing as it deems appropriate.

(b) **Duty of the clerk.** When the address of a defendant shown on the original notice is in a county other than the county in which the action is filed, the clerk must notify the defendant of his right to apply for a change of place of trial and provide him with a form, substantially in the form provided by Form 25, Appendix of Forms.

Comment: Failure to provide for changes of venue in proper cases has been a major defect in the small claims court systems in other states. In those states collection agencies and commercial lenders habitually file actions in the county of their principal place of business against

defendants scattered throughout the state. The defendant who lives any distance away is effectively precluded from making his defense.

This Rule is aimed at placing the parties on a footing of substantial parity as far as procedure is concerned, and at allowing the frequently impecunious defendant a real opportunity to defend.

The duty of notification is placed on the clerk to make sure that every defendant knows of his right to request a change of venue and has the facilities to make a proper showing of the need for the change to the court.

Rule 93. Joinder, Counterclaims, Cross Claims, and Third Party Claims

(a) **Joinder.** Small claims shall be heard under this division, although the total of the claims joined exceeds three hundred dollars, exclusive of interest and costs. If a party joins a small claim with one which is not a small claim, the court shall 1) order the small claim to be heard under this division and dismiss the other claim without prejudice, or, 2) as to parties who have appeared either a) order the small claim to be heard under this division and the other claim to be tried by the regular procedure, or b) order both claims to be tried by regular procedure.

(b) **Counterclaims, Cross Claims and Third Party Claims in Small Claims Actions.** In small claims actions, a counterclaim, cross claim, or third party claim not in the amount of a small claim shall be pleaded in the form of a regular pleading. A copy shall be filed for each existing party. New parties, when permitted by order, may be brought in under Rule 13(h) and shall be given notice under this division. The court shall either 1) order such counterclaim, cross claim or third party claim to be tried separately by regular procedure and the other claims to be heard under this division, or 2) order the entire action to be tried by regular procedure.

(c) **Counterclaims, Cross Claims, and Third Party Claims in Regular Actions.** In regular actions, a counterclaim, cross claim or third party claim in the amount of a small claim shall be pleaded, tried, and determined by regular procedure, unless the court transfer such small claim to the small claims docket for hearing under this division.

Comment: It is intended to preserve in small claims actions the provisions of the Rules designed to avoid multiplicity of suits. But by so doing, claims other than small claims may be joined with small claims in the same action. These provisions are designed to preserve the benefits of the regular procedures for such regular claims.

Rule 94. Proof of Service, Determination that Action Properly Brought

At the time for hearing the court shall first determine that proper notice has been given a party before proceeding further as to him, unless

he has appeared, and also that the action is properly brought as a small claim.

Comment: These responsibilities are placed upon the court because technical pleadings and pre-trial steps are to be kept at a minimum.

Rule 95. Default, Continuance

No claim shall be dismissed for failure to file a responsive pleading. Unless good cause to the contrary appears, 1) if the parties fail to appear at the time of hearing the claim shall be dismissed without prejudice; 2) if the plaintiff fails to appear but the defendant appears, the claim shall be dismissed with prejudice; and 3) if the plaintiff appears but the defendant fails to appear, judgment shall be rendered against the defendant, if the relief to be granted is readily ascertainable. The filing by the plaintiff of a verified account, or an instrument in writing for the payment of money with an affidavit that the same is genuine, shall constitute an appearance by plaintiff for the purpose of this Rule. At the request of any party, the court may grant such party a continuance to a day certain.

Comment: These special provisions for default are made because in many small claims actions the parties will be without the aid of counsel and because the purpose of the proceeding is to secure expeditious final determination of such claims to the extent consistent with reasonable protection to the parties.

It is essential that the court have the power to grant continuances, but this power should be used sparingly and only when good reason therefor is shown. A continuance may be essential if a permissive counterclaim (one not arising out of the transaction or occurrence that is the subject matter of the suit), cross claim or third party claim is filed.

Rule 96. Use of Discovery Devices and Pre-Trial

The discovery devices provided by Division V of these Rules shall only be used upon order after motion showing good cause therefor; and the pre-trial procedure provided by Rule 16 hereof shall only be used where the court in its discretion determines that the trial will be expedited and so orders.

Comment: The expense and delay incident to use of the discovery devices, and the fact that their use usually requires the attention of an attorney, makes them inappropriate in most small claims actions; and the nature of small claims hearings ordinarily makes pre-trial unnecessary and perhaps duplicative of the hearing itself.

Rule 97. Jurors

(a) **Right Preserved, Initial Panel.** The right of trial by jury as de-

clared by the Constitution of the State of Montana is preserved, and the initial panel shall consist of 10 jurors.

(b) **Examination of Jurors.** The court shall conduct the examination of prospective jurors, but shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(c) **Challenges to Jurors.** The challenges are either to the array or panel, for cause, or peremptory. There can only be one challenge on each side to the array or panel, which may be made by one or more of the parties. Each party may challenge for cause on any grounds set forth in § 93-5011, Revised Codes of Montana, 1947. Each party is entitled to 2 peremptory challenges.

Comment: Small claims are defined in terms of a civil action in which a proposed constitutional amendment would provide for a jury of not more than 6 persons. Further, these being cases in which parties infrequently will be represented by counsel, the courts should exercise a stronger role than in regular actions. This Rule is drafted accordingly, placing the conduct of the examination of prospective jurors in the hands of the court, reducing the number of peremptory challenges and the number of jurors on the original panel. Actually, it is not contemplated that a jury will be used in most small claims actions; the provisions of Rule 38 with respect to demand for a jury and waiver of trial by jury will apply to small claims actions.

Rule. 98. Hearing

(a) **Scheduled Sitzings of Small Claims Division.** For the convenience of the litigants, the chief judge of a district may provide that in addition to the sittings of the small claims division during ordinary hours of court, the court shall be held at such hours as will allow litigants the use of the court without unnecessary hardship.

(b) **Representation by Attorney.** A party may be represented by an attorney only if the court so orders on a showing by the party that his presentation will be prejudiced without such representation. If the court permits one party to be represented by an attorney it shall permit such representation of all parties.

(c) **Time and Nature of Hearing.** The time for appearance shall be the time for hearing, unless a continuance has been granted under Rule 95. The hearing shall be simple and informal, and shall be conducted by the court itself, without regard to technicalities of procedure; but the decision must be based on substantial evidence. The court shall swear the parties and their witnesses, and examine them in such way as to bring out the truth. The parties may participate, either personally or by attorney if the court permits. The court may continue the hearing from time

to time if justice requires. The proceedings shall not be reported unless a party provides a reporter at his own expense or the parties by agreement cause the proceedings to be electronically reported, but there shall be no delay for such purpose.

Comment: An informal hearing, with simplicity and dispatch is at the heart of the small claims procedure, and is in accord with the nature of such actions and the character of the parties.

Since defendants are frequently wage earners, it may be a real hardship on them to attend a hearing at ordinary hours of court, and subdivision (a) permits evening hearings or hearings at some other convenient time.

These Rules contemplate a non-technical hearing, and the presence of lawyers technically trained in a technical profession may defeat the features intended. In fact, in some jurisdictions attorneys are not permitted to appear. But this is considered too rigid where there is no opportunity for trial de novo in an intermediate appellate court. Consequently, subdivision (b) permits representation by an attorney if the court so orders on a showing of need for adequate presentation.

Rule 99. Judgment, Minutes

(a) **Nature of Judgment, Entry.** The judgment shall be entered in a space on the original notice first filed, and the clerk shall immediately enter the judgment in the small claims docket and district court judgment book, as provided by § 93-5705, Revised Codes of Montana, 1947. Such relief shall be granted as is appropriate. The court may enter judgment for installment payments to be made directly by the party obligated to the party entitled thereto; and in such event execution shall not issue as long as such payments are made, but execution may issue for the full unpaid balance of the judgment upon the filing of an affidavit of default. When entered on the small claims docket and the district court judgment book, a small claims judgment shall constitute a lien to the same extent as regular judgments entered on the district court docket and judgment book; but if a small claims judgment requires installment payments, it shall not constitute a lien for any amount until an affidavit of default is filed, whereupon it shall constitute a lien for the full unpaid balance of the judgment.

(b) **Minutes.** Unless the hearing is reported, minutes of the testimony of each witness and of any stipulation of the parties shall likewise be entered on the original notice first filed; and the exhibits or copies thereof shall be attached to such original notice or be filed, until released by the court.

Comment: Parties to small claims litigation frequently are not in strong economic positions. Consequently, broad power to grant appropriate judgments, and specifically judgments permitting payment by in-

stallments, is granted to the court. This actually may facilitate satisfaction of claims.

Rule 100. Appeals

Appeals may be taken to the Supreme Court of Montana from final judgments in small claims actions in the same manner as appeals in regular actions, but no appeal may be taken from an order or interlocutory judgment. The record on appeal shall consist of 1) the original notice, 2) minutes of the testimony of witnesses, stipulations, exhibits or copies thereof entered on the original notice, attached hereto or filed, as provided for in Rule 99(b), and 3) a copy of any report of the proceedings or transcript of an electronic recording thereof, as provided for in Rule 98(c). The record shall be prepared by the clerk of the district court, certified by him as correct, and transmitted to the Supreme Court within 10 days after the filing of the notice of appeal, unless the time is extended as provided in Rule 10(c) of the Rules of Appellate Civil Procedure. The appellant shall pay for obtaining any transcript, and the cost thereof shall not be recoverable from the respondent.

Comment: Appeals from interlocutory orders and judgments would be in conflict with the purpose to obtain an adjudication on the merits with dispatch. Any appeal must be simple and inexpensive to accord with the fundamental character of the proceeding and, consequently, the record is kept to a minimum and appeals are only permitted from final judgments.

Rule 101. Other Statutes and Rules

Other statutes and rules relating to civil proceedings shall apply to small claim sections but only insofar as not inconsistent with this division. Civil actions coming within this division but commenced as regular actions shall not be dismissed but shall be transferred to the small claims docket and proceed accordingly. Civil actions not coming within this division but commenced hereunder shall be dismissed without prejudice except for defendants who have appeared, as to whom such action shall be transferred to the regular district court docket and proceed accordingly.

Comment: This division does not attempt a complete formulation of Rules applicable to small claims actions; it merely makes special provisions with respect to them, which must be supplemented by reference to other statutes and Rules.

It is assumed that the Advisory Committee on Rules of Civil Procedure to the Supreme Court of Montana will make a detailed study of existing statutes and Rules in comparison with the proposed Rules in this division, to determine whether or not further adjustments are necessary, and that the Court will have the benefit of this study and the recommendations of its committee when deciding to adopt special Rules applicable to small claims actions.

FORM 24. ORIGINAL NOTICE

(Title of court)	}	SMALL CLAIM No.....
Plaintiff(s)		
Address of each plaintiff		
vs.		
Defendant(s)		
Address of each defendant		

ORIGINAL NOTICE

To the above named defendant(s) :

YOU ARE HEREBY NOTIFIED that the above named plaintiff(s) demands of you

.....
(1. If demand is for money, state amount; 2. If demand is for something
.....
else, state briefly what is demanded and its value in money; 3. If both
.....
money and something else are demanded, state both 1 and 2.)
based on.....
(state briefly the basis for the demand)
.....

.....
and that unless you appear and defend before the above named court at
..... * in..... *, Montana, at..... * o'clock *.M on
the..... * day of..... *, 19..... *, judgment will be ren-
dered against you for the relief demanded, together with interest and
court costs.

.....
Plaintiff(s)

*To be completed by the Clerk of the District Court.

FORM 25. APPLICATION FOR CHANGE OF PLACE OF TRIAL

(Title of court and cause)

(Cause Number)

NOTICE TO DEFENDANT: RULE 92 OF THE RULES OF CIVIL PROCEDURE ALLOWS ANY DEFENDANT WHO IS NOT A RESIDENT OF THE COUNTY WHERE A SMALL CLAIMS ACTION IS FILED AGAINST HIM TO REQUEST A CHANGE OF PLACE OF TRIAL. ALLOWANCE OF SUCH APPLICATION IS DISCRETIONARY WITH THE COURT. IF YOU WISH TO APPLY FOR A CHANGE OF PLACE OF TRIAL, PLEASE FILL OUT THIS FORM IN DETAIL, GIVING ALL OF THE FACTS UPON WHICH YOU BASE YOUR APPLICATION. YOU MAY MAKE THIS APPLICATION BY MAIL BY SENDING IT TO:

(Address of court or clerk)

THE APPLICATION MUST BE MADE WITHIN SEVEN DAYS OF THE RECEIPT OF THE ORIGINAL NOTICE IN THIS CASE.

TO THE ABOVE-ENTITLED COURT:

I, _____, a defendant named in the above-entitled small claims action, hereby request a change of place of trial to _____ County, because I am not a resident of the county in which this action is filed.

My reasons for applying for this change and the facts which show that the ends of justice would be served by changing the place of trial are:

(List reasons, such as personal difficulty in appearing to defend, convenience of witnesses, undue expense, or anything else that you think is pertinent, and give the facts of your situation *in detail*.)

Date_____
(Signature)

Changes in Criminal Procedure

If the proposed revision of the judicial article is adopted, all statutes and references in statutes to justice and police courts will automatically become void and of no force and effect. Since all judicial functions below the Supreme Court level will be absorbed into the district court, the statutes prescribing district court procedures will automatically become applicable to all actions unless special provision is made for particular kinds of actions. The following proposed changes will set up special statutory rules for the handling of cases at the misdemeanor level. The terminology "crimes of less than the grade of felony" is used rather than the term "misdemeanor" because the Criminal Law Commission contemplates the creation of a new category of offenses which will rank below the present misdemeanor, to be called violations, and include offenses which do not involve a sufficient degree of culpability to be formally classified as crimes. Chapter 20, which now covers all of the procedure in justice and police courts, will then become a series of statutory exceptions to the regular district court procedures which will provide a shorter form of procedure for less serious offenses.

CHAPTER 20⁵¹

Prosecution of Nonfelony Crimes

95-2001. Initiation of proceedings. ~~In justice and police courts~~ *All criminal prosecutions must be commenced by complaint under oath when the crime charged is less than the grade of felony.*

95-2002. Minutes. *A separate docket must be kept by the justice of the peace, or police judge, clerk, of crimes of less than the grade of felony, in which must be entered each action, and the proceedings of the court therein. [This section will provide for the keeping of a separate docket by the clerk of the court for these proceedings which are now handled in justice of the peace or police court.]*

95-2003. Change of place of trial. REPEALED.

[Section 95-1710 R. C. M. 1947 will automatically become applicable to these proceedings when the constitutional change becomes effective. 95-2003 provides for change of venue from township to township within the county. This will not be practicable since townships will, in effect, be abolished, so the district court procedure for change of venue to another county would have to be the remedy if the case seemed to make it necessary.]

⁵¹Official Code of Criminal Procedure, as enacted by the 40th Montana Legislative Assembly, 1967. New matter is italicized; matter to be omitted is lined through.

95-2004. Trial in justice and police courts for offenses less than the grade of felony. (a) Method of Trial:

(1) The defendant is entitled to a jury of six (6) qualified persons, but may consent to a lesser number.

(2) A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket.

(3) Questions of law shall be decided by the court and questions of fact by the jury except when a jury trial is waived, then the court shall determine both questions of law and of fact.

(b) Plea of Guilty. Before or during trial a plea of guilty may be accepted when:

(1) The defendant enters a plea of guilty in open court, and

(2) The court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(c) Presence of Defendant. The trial may be had in the absence of the defendant; but if his presence is necessary for any purpose, the court may require the defendant at the trial.

(d) Time to Prepare for Trial. After the plea the defendant shall be entitled to a reasonable time to prepare for trial.

95-2005. Formation of trial jury. Number of jurors. A jury in justice or police court cases below the grade of felony shall consist of six (6) persons, but the parties may agree to a number less than six (6).

~~(b) Formation of Trial Jury. In January of each year each justice of the peace and each police judge shall select at least fifty (50) names from the jury list which is filed in the office of the clerk of the district court. The list of names selected shall be posted in a public place and shall comprise the trial jury list for the ensuing year.~~

~~Trial jurors shall be summoned from the jury list by notifying each orally that he is summoned and of the time and place at which his attendance is required.~~

(b) Formation of trial jury. Such juries shall be formed in the manner provided in § 95-1905 R.C.M. 1947 but in any case the judge may, at his discretion, draw a jury from jury box 3.

The judge shall question all trial jurors summoned for the trial of the case and shall determine if any of them may be challenged for any cause enumerated in § 95-1909(d)(2) of this code. All challenges for cause shall be made by the judge. After the judge has completed his examination of the jury panel, each defendant shall be allowed three (3) peremptory challenges and the

state shall be allowed the same number of peremptory challenges as all of the defendants.

[The transfer of this class of activities to the district court makes the special provision for choosing lists of jurors by justice of the peace and police judges inapplicable. In order to secure expeditious handling of these cases the revised provision set out above will allow a judge to use the regular jury panel, or to draw a jury from jury box 3. This is an exception to the procedure set out in § 93-1510 R. C. M. 1947 which governs resort to jury box 3 in ordinary cases. Since the type of activities dealt with in this chapter are essentially small and local in nature it appears that the list of persons in jury box 3 will represent a fair cross section of the community for the trial of the action. The allowance of the use of regular district court jury plus easy access to the local residents in jury box 3 will, hopefully, provide a quick and satisfactory means of forming trial juries for all minor offenses.]

95-2006 Verdict. UNCHANGED.

95-2007. Sentence and judgment. UNCHANGED.

95-2008. Execution of judgment. (a) The judgment must be executed by the sheriff, constable, marshal or policeman of the jurisdiction in which the conviction was had.

(b) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(c) If a judgment is rendered imposing a fine only, without imprisonment for nonpayment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, in the proportion of one (1) day's imprisonment for every ten dollars (\$10.00) of the fine.

When such a judgment is rendered the defendant must be held in custody the time specified in the judgment, unless the fine is sooner paid.

(d) Any officer charged with the collection of fines, under the provisions of this chapter, must return the execution to the judge within thirty (30) days from its delivery to him, and pay over to the judge the money collected therefrom, deducting his fees for the collection.

All fines imposed and collected by a justice or police court must be paid to the treasurer of the county, city or town as the case may be, if the crime charged is a violation of a statute, and to the

treasurer of the city or town if the crime charged is a violation of an ordinance, within thirty (30) days after the receipt of the same, and the justice or police judge must take duplicate receipts therefor, one (1) of which he must deposit with the county or city or town clerk as the case may be.

95-2008.1. Fines for ordinance violations on appeal. REPEALED.

95-2009. Appeal. REPEALED.

[The above two sections pertaining to appeals from inferior courts to district court will be completely nullified by the abolition of the inferior courts. There will be no appeals to or trials de novo in the district court since the actions will be in the district court from the beginning. Appeals will be directly to the Supreme Court as in other district court actions and will be governed by Chapter 24, Title 95, R. C. M. 1947.]

CONCLUSION

Court modernization has been accomplished within the past dozen years or is on the way in a majority of the states of the Union, involving minor court reform and reorganization of entire state judiciaries.⁵² As early as 1945, Missouri replaced the justice of the peace system by magistrate courts, staffed by judges who are admitted to the practice of law and who are paid a salary.⁵³ No less than fourteen states have completely overhauled their justices of the peace systems in the last dozen years.⁵⁴

⁵²Court Reorganization Reform, 50 J. AM. JUD. SOC'Y 292 (1967).

⁵³Mo. Laws [1945] 765; MO. ANN. STAT. §§ 482.010, *et. seq.* (1952).

⁵⁴In 1956, Minnesota removed all reference in the constitution to justices of the peace, authorized the addition of two judges to the supreme court and empowered the supreme court to temporarily assign district judges as needed. MINN. CONST. art. VI. In New Hampshire, under the 1957 reform, the civil and criminal jurisdiction, which justices of the peace had exercised concurrently with other state courts, was abolished, leaving justices only ministerial functions. Ch. 244 [1957] N. H. Laws. In Connecticut in 1959, a statewide system of circuit courts was established to replace justices of the peace, trial justices and borough, town and police judges. No. 28, [1959] Conn. Pub. Acts. In 1959, North Dakota replaced justices of the peace by salaried county justices who must be qualified to practice law in the state. Ch. 268, [1959] N. D. laws. In Tennessee in 1959, the legislature passed general legislation providing a uniform system of general sessions courts in all but 6 counties to take over the functions of justices of the peace, which retained non-judicial functions such as performing marriages. TENN. CODE ANN. §§ 16-1101 to 1124 (Supp. 1959). In 1961 in Maine, a unified state-wide system of district courts replaced the old justice of the peace and municipal courts. ME. REV. STAT. ANN. ch. 108A (Supp. 1961). In 1962 in Colorado, a new constitutional judicial article eliminated justice of the peace courts. COLO. CONST. art. VI. In 1962 in Idaho, all references to justices of the peace and probate courts were removed from the constitution thereby permitting reform by act of the legislature. IDAHO CONST. art. V. In Michigan in 1963, the constitution abolished offices of justices of the peace and authorized the substitution of a minor court system. MICH. CONST. art. VI. In Delaware in 1965, the legislature completely overhauled its system of justices of the peace, abolished the fee system and granted them an annual salary of \$8,000.00. DEL. CODE ANN. tit. 10, §§ 9101-9803 (1965). In New Mexico in 1966, a constitutional amendment was adopted calling for the abolishment of justices of the peace within 5 years and the establishment of magistrate courts to exercise limited original jurisdiction. N. M. CONST. art. 6. In

The movement has been toward a unified state court system, away from fragmentation, with coherent and centralized management.⁵⁵

In several states an intermediate appellate court and a municipal court system is provided or retained. However, it is apparent that Montana has no need for an intermediate appellate court, and to establish one would needlessly proliferate our judiciary and increase the cost of the administration of justice.

At the trial level in Illinois there is but one court. Officers, which they call magistrates, are an integral part of the state-wide trial court called the Circuit Court.⁵⁶ In Indiana the Judicial Study Commission has proposed a plan for a unified state trial court for introduction in the 1967 legislature, in which the Circuit Court is the only trial court, con-

North Carolina, the legislature has provided for the establishment between 1966 and 1970 of a district court for the judicial districts of the state, which would replace justices of the peace, mayors' courts, domestic relations and juvenile courts, recorder courts and county courts. N. C. GEN. STAT., §§ 7A-130 to 7A-345 (1965). In 1966 in Wisconsin, a constitutional amendment was adopted removing judicial power from justices of the peace and, in effect, abolishing that office. WIS. CONST. art. 7, § 2. And in 1966, the Wyoming constitution was amended to remove all references to justices of the peace, thereby making possible court reform. WYO. CONST. art. 5, §§ 1, 22, 23.

⁵⁵In Missouri, under constitutional and statutory reforms of 1945, the Supreme Court was given the responsibility for the operation of the court system. It was empowered to transfer trial judges temporarily to other trial courts or to the appellate courts, and to create temporary divisions of appellate courts manned by additional judges. MO. CONST. art 5; MO. LAWS [1945] 765; MO. ANN. STAT., § 482.010, et seq. (1952). The judicial article of the Hawaiian constitution, adopted in 1950 makes the chief justice of the supreme court the administrative head of the courts with power to assign judges from one court to another for temporary service and to appoint an administrative director of the courts. HAWAII CONST. art. V. In Alaska the chief justice of the supreme court is administrative head of all courts; he may assign judges for temporary service and appoint an administrative director to supervise the administrative operations of the state court system. ALASKA CONST. art. IV. In Wisconsin in 1959, an administrative committee for the entire court system was created and authorized to meet with the state judicial council to review the work of the courts and plan for the efficient handling of judicial business. CH. 315, [1959] WIS. SESS. LAWS. The 1960 amendments to the Arizona constitution created a unified judicial system under the administrative direction of the Chief Justice of the Supreme Court, aided by an administrative director of the courts. ARIZ. CONST. art. VI. In New York a constitutional amendment and implementing legislation vested authority and responsibility for the supervision of the state court system in the administrative board of the judicial conference, composed of the chief justice of the court of appeals and the presiding judges of the appellate division of the supreme court, N.Y. SESS. LAWS 1960 at LXV (McKinney) amending the New York Const. art. VI, effective 1962. In Arkansas in 1965, the legislature made the chief justice the administrative director of the entire judicial establishment. ARK. STAT. ANN. 22-142, 143 (1947). In 1965 in Connecticut, the position of chief court administrator, who must be a judge of the supreme court, was created. 1965 P. A. 331. In Tennessee in 1965 the legislature provided for the office of executive secretary to the supreme court to aid in the administrative work of the supreme court. TENN. CODE ANN. 16-112 to 118, 16-325 to 329 (1955). In Kansas in 1965, the legislature provided for the supervision by the supreme court of all district courts. KAN. STAT. ANN. 20-318 to 324 (1964). In 1966, North Carolina legislation provided for an administrative office of the court to be supervised by a director appointed by the chief justice of the supreme court. N. C. GEN. STAT. 7A-130 to 345 (1965). In 1966 South Dakota amended its constitution to allow the Supreme Court to divide the state into county districts, and the legislature reduced the number of circuit court districts from 12 to 10, the presiding judge of the Supreme Court to supervise the work of the circuit courts. S. D. CONST. art. 5, §§ 19 and 20; ch. 114, [1966] S. D. LAWS.

⁵⁶Ill. H. J. Res. 39 (1961), amending ILL. CONST. art. VI.

templating that a division of labor would evolve, possibly including small claims and traffic cases, and that when trial work increases new courts will not be established but rather more circuit judges will be provided.⁵⁷ The Iowa Legislative Court Study Commission has prepared a report recommending essentially a two-level court system. At the trial level a unified district court system is provided with law trained commissioners to be appointed by the district judges to handle nonindictable misdemeanors, as "arms" of the district court, traffic violation offices and small claims procedure. The problem of municipal courts gave some trouble and the proposal is to phase them out by providing that no municipal judgeships shall come into existence in the future.⁵⁸

In Colorado, where municipal courts were retained, it has been regretted. The presiding judge of the Denver County Court, put it this way:

"The Municipal Court movement within the cities has been a partial solution but at best a stop gap. Certain weaknesses are apparent. Jurisdiction has been further fragmented; the court has frequently grown apart from a state system; justice has tended to become provincial and the local budget has at times become dependent on the intake. Frequently, the judge serving a short term, or at the sufferance of other local officials, and thus divested of judicial independence, has been hard pressed to resist those who expect the wrong things from a court. Add to this the fact that only in the large metropolitan areas is there the likelihood of producing incentives necessary to entice a qualified full-time judiciary, it may be readily seen this is not the ultimate solution."⁵⁹

In Montana, the consensus of the Citizens Conference on the Montana Judicial System, which conference was held in Great Falls in the autumn of 1966, reviewed the reasons that our justices of the peace and police courts are not satisfactory. It opined that the quality of justice presently being provided by these courts could be materially improved by adoption of a unified court system which would provide a district court level of judicial administration for all legal proceedings. It also urged that judicial business be conducted in an efficient manner utilizing up to date techniques of administration, including analysis and assignment of case loads.

The problem of prompt justice for the minor criminal offenders, especially traffic and fish and game violators, of course poses a special problem in Montana with its vast reaches of rural territory. This was recognized in the consensus of the Citizens Conference in Montana, when it stated: "This unified court system might be materially implemented by incorporating within it a provision whereby, where needed, district judges might select persons to act as deputy judges or magistrates to assist the

⁵⁷*The Case for a Two-Level State Court System*, 50 J. AM. JUD. Soc'y 185, 186 (1967).

⁵⁸Copy of their report was obtained from Clarence A. Kading, Judicial Department Statistician, State House, Des Moines, Iowa.

⁵⁹Address delivered by William H. Burnett, presiding Judge of the Denver County Courts, to the Minnesota Conference on Courts, September 9, 1966.

district court in supplying continuous court representation in remote areas of the state." The proposal in this article for the appointment of district court commissioners is designed to meet this problem.

This article, then, presents a blueprint for modernization of the Montana judicial system along the lines being followed in other states. It contemplates a two-level court system, with built-in administrative management, and a reduction of the number of judicial districts to facilitate such management. It does not contemplate reduction, but rather expansion of the number of district judges as the work load may require; and it contemplates divisions for specialized types of cases, particularly small claims.

Abolition of inferior courts, reduction of the number of courts, and expansion of qualified judges at the district court level, are the dominant themes. Certainly taxpayers should be interested in this, because "even though the number of judges is the same, if they work in one court instead of two, there is only one court's administrative and clerical staff. . ."⁶⁰ And more important, the quality of justice dispensed will be improved, and the respect of citizens for law enhanced by ceasing to expose them to courts which are in fact, as well as in name, inferior.

⁶⁰*The Case for a Two-Level State Court System, supra*, note 57, at 187.

